



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

AGENDA

DATE/TIME: Tuesday, February 17, 2004 - 7:00 p.m.

LOCATION: City Hall Council Chambers
3300 Newport Boulevard

Roll Call

Introductions

1. Minutes of January 20, 2004 (*draft minutes attached*)
2. IRWD Presentation on the Natural Treatment System (NTS) Project and Report from the Subcommittee on IRWD Draft Environmental Impact Report (DEIR) on the Natural Treatment System
3. Report from Membership Subcommittee
4. Report from EQAC Representative to GPUC
5. Report from EQAC Members on GPAC
6. Report on LCP process
7. Council Member Reports
8. Report from staff on current projects
9. Public Comments
10. Future Agenda Items

NEXT MEETING DATE: **March 15, 2004**

LOCATION: **Police Department Auditorium**

*Draft attachments can be found on the City's website <http://www.city.newport-beach.ca.us>. Click on **City Council** and then click on **Agendas and Minutes**. The Attachments are also available in the City of Newport Beach Planning Department, 3300 Newport Boulevard, Building C, 2nd Floor



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

DRAFT Minutes 01-20-04

Minutes of the Environmental Quality Affairs Citizens Advisory Committee held at the City Council Chambers, 3300 Newport Boulevard, on January 20, 2004.

Members present

Robert Hawkins, Chairperson
Cris Trapp, Vice Chairperson
Steven Bromberg, Council Member
Richard Nichols, Council Member
Barry Allen
Gus Chabre
Laura Dietz
Thomas Eastmond
Maggie Fitzgerald

Sandra Haskell
Carol Hoffman
Phillip Lugar
Dolores Otting
Nancy Raney
Richard Rivett
Louis Von Dyl
Christopher Welsh
Jennifer Winn

Staff representatives

Sharon Wood, Assistant City Manager
Niki Kallikounis, Planning Dept. Assistant

Members not present

Brent Cooper
Ray Halowski

Tom Hyans – Sick Leave

The meeting was called to order at 7:00 p.m.

1. Minutes of December 15, 2003

Motion: Dolores Otting to approve the minutes:

Seconded: Phillip Lugar

Motion passed unanimously.

2. County of Orange Notice of Preparation (NOP) of Draft Supplemental EIR (DSEIR) for Irvine Business Complex (IBC) the Central Park Project (formerly Parker-Hannifin) Subcommittee Report

Chairman Hawkins described the Central Park project to the committee. The committee reviewed the subcommittee report and made changes.

Motion: Phillip Lugar to accept the report with corrections and changes:

Seconded: Gus Chabre. Further discussion ensued.

Substitute motion: Laura Dietz to strike the second paragraph under "c. Biological Resources."

Seconded: Chris Welsh.

Motion fails. Further discussion ensued and changes made.

Original Motion: passed. Four opposed. Jennifer Winn abstained.

3. County of Orange Notice of Preparation (NOP) of DSEIR for Pelican Hills Resort Subcommittee Report

Discussion ensued and changes and corrections were made in the subcommittee report

Motion: Chairman Hawkins to delete the first paragraph under "c. Population and Housing":

Seconded: Cris Trapp

Motion passed unanimously.

Motion: Chairman Hawkins to accept Sharon Wood's proposal to strike the second sentence in the second paragraph under "c. Population and Housing" and also strike "however" from the sentence after and say, "If the project does not include (strike "such") residential structures, then the DEIR should fully discuss..."

Seconded: Laura Dietz

Motion passed unanimously.

Motion: Gus Chabre to delete the last paragraph under "n. Public Services."

Seconded: Barry Allen

Motion passed unanimously.

Motion: Barry Allen to leave the last two paragraphs under "o. Mandatory Findings" as they are written.

Seconded: Phillip Lugar. Further discussion ensued.

Motion passed. One opposed.

Motion: Chairman Hawkins to approve the report with all corrections and changes.

Seconded: Phillip Lugar

Motion passed unanimously.

4. Set February Meeting Date

Discussion regarding agenda items for the February meeting ensued. February 17, 2004 is the next EQAC meeting date.

5. Report from Membership Subcommittee

The subcommittee did not have a meeting. Sandra Haskell volunteered to serve on the subcommittee.

6. Report from EQAC Representative to GPUC

There was no meeting last month.

7. Report from EQAC Members on GPAC

Phillip Lugar reported that the GPAC had a presentation on Bolsa Chico from the developer of the project.

8. Report on LCP Process

Ms. Wood reported that the Local Coastal Program Certification Committee will meet tomorrow, January 21, continuing to review revisions to the document in response to comments that staff received from the Coastal Commission staff.

Coastal Commission staff will meet with City staff on Thursday, January 22 and take a tour of Newport Beach's coastal zone.

9. Council Member Reports

Council Member Nichols reported that the City Council considered comments on the Scholle Project in Irvine and that EQAC received accolades for their report.

Council Member Nichols also reported that Planning Commissioner Barry Eaton wrote a letter commending EQAC for their comments on the Scholle Project.

10. Report from Staff on Current Projects

Ms. Wood commented that EQAC is having an impact with the work they are doing on the Irvine Business Complex. Ms. Wood said that the City of Irvine staff said they have postponed, to a date uncertain, the review of the Scholle Project by their Transportation and Infrastructure Commission.

After a comment by a committee member, discussion re: the 19th Street bridge ensued, and Ms. Wood reported that the City Council has appointed a new committee to work with Costa Mesa and Huntington Beach to see if some progress could be made towards a solution.

Ms. Wood reported that the St. Mark draft environmental impact report (EIR) will possibly be ready in February.

11. Public Comments

Louis Von Dyl reported that EQAC member Tom Hyans is now in St. Jude hospital in Fullerton and is getting better.

12. Future Agenda Items

- IRWD DEIR on the Natural Treatment System project.
- IRWD presentation on the Natural Treatment System project.

Chairman Hawkins adjourned the meeting to February 17, 2004 at 9:25 p.m.

MEMORANDUM

To: Environmental Quality Affairs Citizens Advisory Committee ("EQAC")

City of Newport Beach

From: IRWD NTS II EQAC Subcommittee

City of Newport Beach

Subject: Irvine Ranch Water District's ("IRWD" or the "District") REVISED DRAFT Environmental Impact Report (the "RDEIR") regarding the San Diego Creek Watershed Natural Treatment System Project (the "Project")

Date: February 12, 2004

Thank you for the opportunity to comment on the REVISED Draft Environmental Impact Report ("RDEIR") for the captioned Project. As indicated in our earlier comments on the original Draft Environmental Impact Report ("Original DEIR") for the Project, we understand that the City of Newport Beach (the "City") supports any project which will improve water quality in the Upper Newport Bay. As before, nothing in these comments detracts from that support; these comments simply address the RDEIR. As with our original comments, our goal is to assist in improving, if necessary, the environmental document and the Project.

These comments on the RDEIR specifically and generally incorporate our earlier comments on the Original DEIR for the Project.

In addition, we offer the following comments on the RDEIR.

1. Introduction.

At the outset, we note that the Project and its description is a mix of existing and proposed facilities together with operational protocols for the facilities. However, at bottom, the existing and approved facilities (Category A-D sites) together with their operational protocols are part of the existing hydrologic conditions of the San Diego Creek Watershed.

If the RDEIR strips out these existing conditions and protocols, the Project virtually disappears. We discuss this disappearance/existing conditions problem at several points

in our comments below. However, at bottom, the RDEIR should be revised to recognize this issue, and explain and describe the full nature and extent of the Project.

2. Executive Summary:

The entire RDEIR suffers a problem similar to the Original DEIR: the number of sites and the differing levels of analysis is confusing, but also the text and the tables do not match. For example, in the Executive Summary, we are told that there are **eight** Regional Retrofit Facility sites:

“This Revised Draft EIR also includes detailed environmental analyses of eight NTS Regional Retrofit Facility Site and **three** Existing Regional Facility Sites for which construction level design and/or development information, as appropriate to each facility type, is available. One of the Regional Retrofit Facilities (Site 67) is evaluated herein at the Program level of environmental analysis since the specific location and design is currently conceptual and is anticipated to be determined in the future.”

RDEIR, ES-5. Table ES-1 on the next page lists **nine** Regional Retrofit Facility sites, including Site 67.

In addition, Table ES-1 shows **three** Existing Regional Facility sites, 46, 13 and 39. However, Table 2.5-1 in the Plan Description chapter shows **four** Existing Regional Facility sites, adding Site 27. RDEIR, 2-25.

This problem continues throughout the RDEIR. For instance, Chapter 1.0, Information, divides the NTS sites into five categories “that correspond to the level of planning information available for the Sites and the status of locally approved CEQA documentation” The **five** categories are: A-E. Category A is Existing Regional Facility sites and the text in this section lists four sites: 46, 13, 39 and 27, RDEIR, 1-3, while, as indicated above, states that there are three Existing Regional Facility Sites. To further confuse the issue, Chapter 2.0, Plan Description, lists **six** categories; A-F. RDEIR, 2-29. We assume for the purposes of these comments that the latter figures for each category are correct.

This lack of consistency in the text and the tables should be corrected in the final document or in another Revised RDEIR. In addition, the final document or the revised RDEIR should include an explanation of the distinction between “regional” and “local” sites.

2. Chapter 1: Introduction:

Chapter 1 begins:

“This Revised Draft EIR has been prepared to address revisions and adjustments to the NTS Master Plan and previous Draft EIR that resulted from public review and comment on the Draft EIR issued March 2003.”

RDEIR, 1-1.

We have several comments on this opening statement. First, the NTS Master Plan was also issued for comment on March 2003. However, the RDEIR does not include the complete and revised Master Plan; it includes only "key sections of the NTS Plan." As indicated below, we recommend that Revised Master Plan be published and circulated for public review and comment and that the RDEIR be revised and re-issued for comment on the Revised Master Plan.

Second, the RDEIR fails to include and respond to earlier comments on the Original DEIR. The RDEIR should be further revised to include and respond to such earlier comments.

Third, Chapter 1 and the entire RDEIR employs key terms in an ambiguous fashion. For instance, the Executive Summary discusses the Natural Treatment System ("NTS") Plan which

"consists of proposed improvements to assist managing the quality of surface runoff within the San Diego Creek Watershed, an approximate 122 square mile area located in central Orange County. The NTS Plan would result in treatment of runoff from both existing development and new development within the **two watersheds.**"

Executive Summary, ES-1 (Emphasis supplied). However, Chapter 1 states

"The NTS Plan is known as the San Diego Creek Watershed Natural Treatment System Master Plan, hereinafter referred to as the 'NTS Plan' (March 2003)."

RDEIR, 1-5; see also RDEIR, 1-9. The RDEIR should be revised to define clearly the NTS Plan and the NTS Master Plan. Further, its revision should also discuss and explain what two watersheds which the Project proposes to address: the RDEIR appears to discuss only the San Diego Creek Watershed and fails to discuss a second watershed.

Fourth, the RDEIR states:

"The Draft NTS Plan was available for public review during the 60 day review period for the previous Draft EIR. A Revised NTS Plan will be available for review **after completion of public review period for this Revised Draft EIR.** Revised section of the NTS Plan are appended to this Revised Draft EIR to facilitate an early review of key sections of the revised NTS Plan. In this way, it can be assured that the Revised NTS Plan addresses any substantive comments received during the public review period."

RDEIR, 1-10. However, these "key sections" do not further describe the Project but include operational components including operations and maintenance, monitoring and reporting plan, and coordination and agreements.

Moreover, this truncated discussion of the NTS Master Plan is also troublesome. Section 1.5 states:

"The NTS Plan has been prepared by the Irvine Ranch Water District (IRWD), a California Water District, and **constitutes the detailed project description.**"

RDEIR, 1-9. This is problematic for several reasons: As indicated above, the RDEIR does not include the entire NTS Master Plan; the District did not circulate the revised Master Plan for comment and review. That is, the "**detailed project description**" contained in the NTS Plan, i.e. the March 2003 Master Plan, **is not part of the RDEIR.** Moreover, the **detailed project description** will be revised based upon comments on the RDEIR so that "the Revised NTS Plan addresses any substantive comments received during the public review period." RDEIR, 1-10.

As discuss below, a project description forms the heart of an EIR and any environmental analysis: it is supposed to describe fully the project under consideration. As discussed below, the RDEIR should be revised to include the complete and detailed Project description, the Revised Master Plan should be recirculated with this revised RDEIR so that the public may understand the full scope of the Project.

Pursuant to CEQA Guidelines section 15099.5, the RDEIR attempts to "summarize the revisions made to the previously circulated draft EIR." RDEIR, 1-2. However, the summary merely sketches the changes: the RDEIR should be revised and include the summaries in detail in the applicable sections.

Section 1.6 discusses the organization of the RDEIR. It is confusing. The RDEIR:

"has been tailored to analyze the NTS Facilities to the greatest level of detail possible constrained only be **the differing levels of project design and development of information** available for different NTS Facilities and based upon anticipated phasing of wetland facility implementation."

RDEIR, 1-15. The RDEIR analyzes some sites on a project level and others on a general and program level. However, as discussed below, these various levels create confusion on the particular level of analysis.

3. Chapter 2.0: "Plan' Description:"

The Project description is one of the key parts of any environmental document. As the County of Inyo Court noted long ago,

"Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."

County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185, 199. In addition, the CEQA Guidelines section 15124 requires that an EIR describe the project "in a way that will be

meaningful to the public, to the other reviewing agencies, and to the decision-makers.” Discussion, Guidelines section 15124.

At the outset and as indicated above, the RDEIR fails to meet this standard. As indicated above, the RDEIR defers preparation of the Project or Plan description until approval of the NTS Master Plan. The RDEIR should be revised to incorporate a complete and full Project description, prepare and finalize the Master Plan or NTS Plan, and recirculate for comment both the NTS Plan and the RDEIR.

Also, as indicated above, the RDEIR as well as the Original DEIR dance a fine line between program and project level analyses. The RDEIR attempts to characterize the Project as a Plan with merely operational, not specifically construction, components. Again, the RDEIR continues to refer to the Project as the “NTS Plan,” i.e. the Master Plan.

As indicated above, one of the RDEIR revisions mentioned above is the revised categories of the proposed sites. Chapter 2.0 identifies these as:

Category A: Existing Regional Facilities (Sites 46, 13, 39, 27).

Category B: Sites with final approval by city local lead agency with previously completed project level CEQA documentation and constructed or under construction (Sites 31, 32, 49, 42).

Category C: Sites with final approval by city local lead agency with previously completed project level CEQA documentation and not constructed (Sites 16, 18, 22, 50, 51, 52, 70a-70c, 71)

Category D: Sites addressed only in the NTS EIR (Regional Retrofit Facilities, Sites 26, 53, 54, 55, 56, 62, 64, 67).

Category E: Sites for which applications will likely be filed and CEQA review pending prior to completion of NTS CEQA review and with concurrent project level CEQA review in the NTS EIR (Sites 9, 10, 11, 12A-12G, 61).

Category F: Sites for which applications and CEQA review will follow certification of the RDEIR (Sites 68 and 69A-69E– PA 18 and PA 39).

This categorical matrix may prove helpful but the categories are confusing. What are “Regional Facilities?” What are “Regional Retrofit Facilities?” What is the difference between the sites included in Category E and in Category F? Why is Category F included in the RDEIR? For any sites with CEQA documentation, how does the RDEIR handle sites approved with remaining significant impacts and requiring statements of overriding considerations? If the RDEIR concludes that various Project Facilities in Categories E or F have no impact on the environment, e.g. no impacts on air quality, then what level of analysis will the local agencies

responsible for the CEQA documentation for the facility perform? That is, what is the relation between the RDEIR and the subsequent CEQA documents for facilities in Categories E and F which are necessary for facilities which have not yet received full CEQA review and approval? What is the difference between existing conditions and the Category A-D sites?

As before, the Facilities consist of three main facility types: facilities in existing drainage systems (In-line), facilities off existing drainage systems (Off-line) and facilities which combine both in-line and off-line features. In addition, the RDEIR includes a new selenium treatment facility which is designed to treat selenium and which would be a "sub-surface flow wetland" which would be designed "to pass water through organically rich and perpetually wet soils, which would trap the selenium." Figure 2.5-1a and b indicate that the selenium facility would be a combined facility (both in line and off line).

As we indicated in our comments on the Original DEIR, any facilities which encroach on the flood control drainage systems are problematic: they will reduce the capacity of crucial flood control systems when drainage into those systems is increasing due to new development, increased irrigation and run-off, and related factors. As indicated below, the RDEIR appears to ignore these concerns: despite our earlier comments, the RDEIR regards flood control/drainage impacts as insignificant.

The selenium site, Site 67, adds special concerns. The site would include:

" . . . a bottom liner to restrict contact with the underlying oxygen-rich groundwater system. Periodic removal of soils would also be required."

RDEIR, 2-19. However, the placement of the site near or in a drainage course would raise other problems: in high flows, how is the site protected so that surface water, silt and other debris will not flow into the site? Also in high flows, what prevents surface flows, silt and selenium contaminated soils from entering the drainage course?

Earlier we also commented on the site selection criteria. The RDEIR states that the first criterion was site availability. However, site availability should be down on the list. A primary criterion should be contribution or proximity to the San Diego Creek. For instance, Sites 53, 52 and 22 in the vicinity of El Toro, Sites 16, 71, 18, 70A-C, north and east of El Toro, are all well outside any tributaries to San Diego Creek. Indeed, nothing in the RDEIR connects these sites to the Creek. All other sites in the Project are in or near the Creek. The RDEIR should be revised to include additional discussion on site selection and criteria, articulate new and different criteria including proximity to drainage areas which flow into the Creek, and describe alternative sites.

As to the actual sites and the various categories, the RDEIR covers over seventy sites. Obviously, the public cannot comment on all seventy sites. We offer comments on various categories and where necessary on specific sites.

For Category A sites, "Existing Regional Facilities," the RDEIR adds no new sites; our earlier comments address these sites.

For Category B sites, "Sites with Final Approval/Constructed or under Construction," including sites 31, 32, 49, and 42, all of these have previously approved CEQA documents including the EIR for residential development in and around Shady Canyon. **For each site, the EIR concluded that the Project, i.e. the construction of the site, would have significant and unmitigated impacts on air quality for construction.** In addition, the EIR discussion for Sites 31, 32, and 49 recognized that their construction would have significant and unmitigated impacts on agriculture. For all of these, the City of Irvine adopted a Statement of Overriding Considerations.

For Category C sites, "Sites with Final Approved/Not Constructed," including sites 16, 18, 22, 50, 51, and 52 and the new sites 70A-70C and 71, all have approved environmental documents: Sites 16, 18, and the new sites 70A-70C and 71 were approved by the City of Irvine as part of the Northern Sphere EIR; Sites 50, 51, 52, 70A-70C and 71 were all approved by the City of Irvine as part of the Great Park EIR. **For each site, the relevant EIR concluded that the Project, i.e. the sites, would have significant and unmitigated impacts on air quality and agricultural resources.** For all of these, the City of Irvine adopted statements of overriding considerations.

For Category E sites, Sites for which applications will likely be filed and with concurrent project level analysis in the RDEIR, including sites 9, 11, 10, 12 (A-G) and 61, none of the sites have approved environmental documentation. However, the changed use—from agriculture to drainage—for each site was in the City of Irvine EIR for the General Plan Amendment 16. As before, the EIR recognized that the Project, changed use of the sites, could have significant and unmitigated impacts on agriculture. The City of Irvine adopted a Statement of Overriding Considerations for the project.

For Category F sites, Sites for which applications and approval will follow, including sites 68 and 69A-69E, no environmental document has occurred. The RDEIR

"... provides only operations and maintenance level CEQA documentation. Review of construction impacts under CEQA will be conducted when a specific site has been selected."

RDEIR, 2-66.

All of these raise several concerns. The Category B through E sites have CEQA documents which recognize their potential for significant and unmitigated impacts. As discussed below, for all sites, the RDEIR should be revised to include a cumulative impacts analysis in connection with air quality and agricultural resources for on the Project sites and for the Project itself.

4. Chapter 3.0: Environmental Impact Analysis:

a. Section 3.1: Land Use/Planning and Land Use Compatibility.

This chapter lists the relevant planning programs and documents that "govern the existing and future land uses for the proposed NTS sites and the areas surrounding these sites." Under the section dealing with the Clean Water Act, the RDEIR states that "(f)or Site 16, permanent federal and state jurisdictional impacts were identified, and mitigation for the loss of non-wetland waters was satisfied through the transfer of existing wetlands credit from the San Joaquin Marsh Duck Pond Mitigation Bank." The RDEIR should be revised and explain the transfer program, the nature and extent of the transfer of existing wetlands credit program and how the transfer was used in connection with Site 16.

For a number of the "relevant planning programs and documents" that are listed in this chapter, there is no discussion of how each program or document applies to the NTS Project; i.e., "Santa Ana River Basin Water Quality Control Plan (Basin Plan) (P. 3.1-33)" and "Newport Bay/San Diego Creek Watershed Management Study (P. 3.1-36)." The RDEIR should be revised or discuss how the Project has been impacted by these existing programs.

Site 27 is located in an existing "habitat mitigation area associated with the Barranca Parkway Extension and San Diego Creek improvements project." The RDEIR states that the modifications necessary to construct Site 27 do not include grading or removing any of the existing mitigation plantings or habitat. However, "(t)he modification would raise the existing outflow riser which would increase runoff retention and extend the residency time within the low flow areas of the mitigation site for both dry weather and storm flows." RDEIR, 3.1-46 The RDEIR should be revised to discuss the impacts on the mitigation plantings of having a greater amount of water for longer periods of time.

Site 62 is located immediately adjacent to an existing mitigation area. The DEIR concludes that "(t)he proposed modifications [for NTS Site 62] would not alter the function of the adjacent SAMS 1 site as a habitat mitigation area and the changes are not considered significant." RDEIR, 3.1-49. The RDEIR should be revised to discuss the changes that will be made to the existing mitigation area as a result of the construction of Site 62 and illustrate that they will not alter the function of the existing mitigation area.

In assessing the Project's consistency with the City of Irvine's General Plan, Table 3.1-3, Land Use Policy Consistency Evaluation, in Appendix C states that Sites 46 and 62 are located in areas that are designated as preservation areas in that document. "The only change at Site 46 would be to increase the current flow diversion rate from the San Diego Creek Channel to the San Joaquin Marsh; however, this change would not preclude the Marsh from being a preservation area." RDEIR, App. C, p. 7. The RDEIR should be revised to discuss and analyze how the Marsh would be affected by an increase in the flow diversion rate, and to illustrate why "this change would not preclude the Marsh from being a preservation area."

Table 3.1-3 in Appendix C states that "(s)ite 56 will require 2.6 acres of the 9.5 acre El Modena Park." However, Chapter 2.0, Plan Description, states that "(t)he NTS Facility [Site 56]

would be approximately 1.3 acres and would be located in the center of the 9.5 acre El Modena Park.” The Final EIR should correct this inconsistency.

b. Section 3.2: Hydrology and Water Quality.

Section 3.2.1 addresses the existing condition of the watershed including existing conditions for surface and ground water. This section recognizes the impaired water quality of San Diego Creek and its watershed as well as water quality problems in groundwater resources.

As noted above, Category A-D sites concern sites which are already constructed or are already approved. The RDEIR fails to consider, discuss and analyze the existing conditions including Category A-C existing and approved drainage sites regarding water quality of surface and groundwater resources in the San Diego Creek Watershed. Because Category A-D sites are already approved, these should be included as existing conditions of the watershed.

Further, Section 3.2 recognizes that the Upper Newport Bay, the terminus of the San Diego Creek Watershed, is an estuary at which salt water and fresh water meet and mix. IRWD provides sewage collection and treatment services for most of the San Diego Creek Watershed, and also accepts dry weather flows from some of the storm sewer systems. The purpose of the Project is to treat urban water runoff in the San Diego Creek Watershed. IRWD assumption for the NTS is based on a total build-out of the San Diego Creek Watershed with a 68% urban use. It currently is at a 50% urban use.

The RDEIR fails to discuss the Project’s impacts on the estuary which is the Upper Newport Bay including an analysis of the Project’s impacts on the meeting and mixing of salt and fresh water including analysis of Project impacts on water temperature and habitat in the estuary. For instance, if the amount of fresh water is increased and disturbs the salinity of the Upper Newport Bay or if temperature difference disturb the estuary balance, the estuary that is the Upper Newport Bay will be seriously affected and perhaps destroyed.

Also, Section 3.2.3 addresses environmental impacts of the Project on water quality. First, this section fails to recognize the existing conditions and includes existing and approved sites in the impacts analysis. Such sites should be treated as existing conditions and any benefits associated with such sites should be regarded as contributing to existing conditions.

Table 3.2-9 summarizes Total Maximum Daily Loads for various constituents including nitrogen, sediment, phosphorus, pathogens, insecticides, organochlorine compounds, selenium and heavy metals. The Project has varied success for each constituent: the Project has limited effect on phosphorus; for pathogens, the Project does not meet the regulatory standard; for organochlorine compounds, the Project objective is not achieved; for selenium, the Project fails to satisfy the regulatory standard.

The RDEIR should be revised to consider alternative systems including treatment and reclamation of stormwater flows which may satisfy Project objectives but may be more costly than the Project alternatives. This will allow the District to conduct a cost benefit analysis to

resolve and choose the Project alternatives.

As for the Category D sites, Regional Retrofit Sites, the RDEIR addresses construction, maintenance and operation impacts for such sites. As for construction impacts, the RDEIR states that such impacts are short term in nature and must comply with various regulatory requirements. Five of these sites (27, 53, 54, 62, 67) are in-line sites where construction impacts may have immediate and substantial affects. The RDEIR contains no detailed discussions of such impacts. The RDEIR should be revised to address all such impacts and, if necessary, propose mitigation.

Further, Site 67's configuration and location remain uncertain. The RDEIR cannot evaluate the nature and extent of the site's impacts when the site configuration and location remain in question. Upon finalizing the specifics of Site 67, the RDEIR should be revised to include discussion of the impacts of the fully described Site 67 and propose necessary mitigation.

Likewise, Category E sites, Sites for which applications are likely, and Category F sites have no specifics: their configuration and location are uncertain. Upon finalizing their specifics, the RDEIR should be revised to include discussion of the impacts of the fully described Category E and F sites and propose necessary mitigation.

c. Section 3.3: Biological Resources.

Section 3.3.1, Existing Conditions states that "(b)iological resources within the San Diego Creek Watershed are governed by several regulatory agencies and applicable statutes and guidelines for which they are responsible" RDEIR, 3.3-1. Among the statutes and guidelines discussed in this section as having governing authority over impacts to the biological resources within each NTS site is the Special Area Management Plan (SAMP), which is currently being developed by the U.S. Army Corps of Engineers for the San Diego Creek.

According to the RDEIR, the SAMP is a "comprehensive aquatic resources plan to achieve a balance between aquatic resource protection and reasonable economic development." The DEIR states that IRWD will seek authorization for construction of the some NTS sites, which are planned for future development, under the SAMP program instead of the traditional Section 404 permitting process.

However, the standards for the SAMP program are still under development. If those standards are to be used as governing authority over impacts to the biological resources within each NTS site planned for future development, it is necessary to allow the SAMP standards to be finalized before a determination can be made that the NTS Plan is consistent with that program and, therefore, Corps permitting of the NTS sites would be governed by SAMP instead of the traditional Section 404 permitting process. The RDEIR should be revised to allow for the finalization of the SAMP standards.

The Biological Resources Technical Study contains a confusing typographical error. The heading for Section 1.2.1 is "Existing Regional Retrofit NTS Facility Sites as 31, 32, 49 and 42." However, the correct sites for this category are Sites 13, 39 and 46, which are discussed in the

text that follows.

d. Section 3.4: Human Health and Public Safety.

e. Section 3.5: Air Quality.

Section 3.5.1 discusses existing conditions for the Project area. As indicated above, numerous sites have received environmental review and approval, and many have been built. However, environmental documents for most of those sites recognized that the project such to review had significant and unmitigated impacts on air quality. Section 3.5.1 contains no discussion of these earlier documents and the significant and unmitigated impacts as existing conditions.

More importantly for the RDEIR, Section 3.5.3 covers the environmental analysis for Project related air quality impacts. Section 3.5.4 sets forth mitigation measures for Project related air quality impacts. Section 3.5.5 concludes that the Project will have significant impacts on air quality.

Given Chapter 2's discussion of Category A-C sites, the RDEIR conclusion is surprising. Many sites previously analyzed were found to have significant and unmitigated impacts on air quality and required adoption of statements of overriding consideration. The RDEIR should be revised to discuss the earlier environmental analysis, explain how the Project sites are different if at all, discuss the Project impacts consistently with the earlier analysis for the Category A-C sites, and, if necessary, propose necessary mitigation.

f. Section 3.6: Landform Modification and Aesthetics.

g. Section 3.7: Cultural Resources.

5. Chapter 4.0: Cumulative Impacts.

Chapter 4 begins with a discussion of Guidelines section 15130 and recent case law interpreting the requirements of section 15130. Under Air Quality, the RDEIR considers the maximum worst case scenario for the Project together with the air quality impacts for the Northern Sphere Project. As noted above, the Northern Sphere EIR recognized that that project would result in significant and unmitigated air quality impacts. The RDEIR concludes that the air quality impacts of the Project are minimal and would not increase the impacts of the Northern Sphere project significantly. Further, RDEIR recognizes that it is unlikely that the Project site would not be constructed at the same time as those in the Northern Sphere project.

However, as indicated above, the RDEIR's analysis of Project related air quality impacts is optimistic: given the impacts recognized by the other environmental documents for the Shady Canyon, Great Park and the Northern Sphere sites, the Project sites may have similar significant and unmitigated impacts.

Further, the environmental documents for the other Category B and C sites involving the Great Park EIR and the EIR for the Shady Canyon sites recognized that construction of those sites would also have significant and unmitigated impacts on air quality. The RDEIR should be revised to consider the cumulative impacts on air quality of all projects for Category B and C sites together with the Project sites and, if necessary, propose mitigation for such cumulative impacts.

As for cumulative impacts on water quality, the RDEIR recognizes that the Project may have cumulative impacts on water quality but concludes that the Project related benefits "will be more than offset by the cumulative reduction benefits" of the Project. As indicated above, the RDEIR misstates the existing conditions: many of the alleged Project related benefits are existing benefits which already affect the San Diego Creek Watershed. The RDEIR should be revised to consider the existing conditions of the watershed including existing or approved Project sites, evaluate Project impacts in relation to Project benefits if any.

In addition, as indicated below and in our earlier comments on the Original DEIR, the Project may have significant impacts on flood control resources. As discussed above, the RDEIR recognizes that the Project may have significant cumulative impacts from sediment and erosion. However, these impacts—sediment and erosion— may also significantly and adversely affect flood control resources; the cumulative impacts of the Project construction may increase such impacts. The RDEIR should be revised to address and discuss such cumulative impacts on flood control resources and, if necessary, propose adequate mitigation.

6. Chapter 5.0: Alternatives.

As indicated above, a Project alternative is treatment and reclamation of stormwater flows. The RDEIR considers three technological alternatives including diversion of San Diego Creek flows to Orange County Sanitation District Facilities for treatment, construction and treatment at a new facility at Michelson Water Reclamation, construction for four new sites for treatment of low flows. Each is rejected because of water loss and habitat impacts.

However, the RDEIR fails to complete the analysis: reclaiming the storm water. The reclaimed water could be sold for irrigation and supplement water purchased for benefit of habitat and biological resources. The RDEIR should be revised to consider and assess this Project alternative, and if appropriate, propose necessary mitigation.

7. Chapter 6.0: Long-Term Environmental Effects.

Chapter 6 recognizes that the Project is "growth accommodating." However, it concludes that the Project will not induce growth because Project sites are located in areas "that are either currently urbanized or already approved for urbanization." RDEIR, 6-1. However, as suggested above, this may prove too much: the Project is not really a project at all: all Project sites are existing or planned, and therefore part of the existing conditions of the San Diego Creek Watershed.

However, the rationale for RDEIR's conclusion of no growth inducement— because the sites are in areas already urbanized or approved for urbanization— fails with respect to Category F sites: "None of these sites are located in an area with previously approved CEQA documentation." RDEIR, 2-65. Given that the RDEIR includes such sites, the Project may be growth inducing.

The RDEIR should be revised to address the growth inducing impacts of the Category F sites and, if necessary, propose adequate mitigation.

8. Chapter 7.0: Effects Found Not to be Significant.

Chapter 7.0 addresses Project related impacts which the RDEIR regards as insignificant. These include: Flood Control; Noise; Traffic; Population and Housing; Geology/Soils; Paleontology; Mineral Resources; and Public Services/Utilities.

As to Flood Control, we repeat our earlier comments on the Original DEIR, the Project Facilities in particular the in-line facilities may adversely affected flood control resources including taking flood control capacity, adversely affecting flood control capacity with silt buildup, impede the efficiency of flood control resources and related affects. The RDEIR should be revised to remove flood control from the insignificant effects, to address and analyze such impacts, and, if necessary, propose adequate mitigation.